

STATE OF VERMONT
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

COMMISSIONER,
VERMONT DEPARTMENT OF LABOR,
Complainant

v.

Docket #RB894

LAKES REGION DRYWALL, INC.,
Respondent

**HEARING OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

FINDINGS OF FACT

This matter came before Hearing Officer Alan S. Rome, Esq. on Wednesday, July 10, 2013. In attendance at such hearing was Board Member Tom Gigielski, Dirk Anderson, Esq. for the State, and Respondent James Patterson, representing Lakes Region Drywall, Inc.

Based on the evidence presented, both documentary and testimonial, the following Findings of Fact are hereby made:

1. Tony Genung, Senior Safety Compliance Officer for VOSHA, testified at the hearing.
2. Mr. Genung has served in that position for approximately seven years. In the past, he has worked at a nuclear shipyard and had done safety inspection work at that locale.
3. Mr. Genung has had numerous trainings regarding the VOSHA codes and regulations. He is up to date on the standards regarding possible violations.
4. On October 27, 2011, Mr. Genung did an inspection at a large construction site at 100 Seward Road, Rutland, Vermont. The Vermont State Employee Credit Union was building a new site in Rutland. Many subcontractors were working at that site. Mr. Patterson's company,

the Respondent, Lakes Region Drywall, Inc., was working as a subcontractor at the site on the day in question.

5. Russell Construction, Inc. was the general contractor regarding the construction of the new VSECU.

6. Mr. Genung traveled around the construction site on the day in question.

7. Mr. Genung observed "a mess of extension cords."

8. Mr. Genung explained that many extension cords were plugged into other extension cords, in violation of VOSHA standards.

9. Mr. Genung discovered that a double halogen lamp, on a tripod, with approximately 1000 watts of power, was plugged into a triple tap extension cord. Apparently, the cord from the halogen lamp was plugged into a Bosch radio box which had a mechanism by which the lamp cord could be plugged into it.

10. The Bosch radio was connected to a branch circuit.

11. According to Mr. Genung, one extension cord was plugged into another extension cord.

12. Exhibit "A-1" was admitted into evidence. It was a photograph of the aforementioned halogen lamp (on tripod). It does appear clearly that the halogen lamp was, in fact, plugged into another extension cord (a triple tap extension cord).

13. Exhibit "A-2" was also admitted into evidence. This is a clearer view of the "messy wire" situation as testified to by Mr. Genung. It also shows cords plugged into the "triple tap" as mentioned, supra.

14. Mr. Genung explained that, upon his observation, the problem was a "overloading of circuits." It was, potentially, a hazardous situation.

15. At the hearing, Mr. Patterson did concede that it was his halogen light. Also, he conceded that the halogen light was wired to the Bosch radio as mentioned, supra.

16. Per the testimony of Mr. Genung, one can easily overload the noted radio box with excessive amperage.

17. Mr. Genung explained that the radio was rated as a "extension cord" because the wiring was six feet or less in length.

18. Mr. Patterson testified at the hearing also. One of his claims was that many of the cords observed by Mr. Genung were not his cords. Although not relevant to this hearing, Mr. Genung did state that other companies were cited for violations as a result of his observation on the date in question.

19. Exhibit "A-3" was admitted into evidence. It is a photo of the Bosch radio in question. Clearly, it does show wires going into the back of the radio, confirming the "extension cord" usage as stated.

20. Mr. Patterson stated that his company has a good record. He was trying to keep his "guys" safe.

21. Mr. Patterson claimed that "it was not his fault." He asserted that "someone" had taken his cords out of the outlet. However, he did admit that there was a violation because the halogen lamp cord was connected to the radio in question.

22. Also, Mr. Patterson stated that because Mr. Genung was inspecting early in the morning, that was unfortunate for him. Had it been noontime, he certainly would have noticed the problem and remedied it.

23. The Hearing Offices does notice, however, by the evidence presented, that the situation may well have been dangerous as early as 9:00 a.m.

24. Mr. Patterson did concede that the halogen lamp and the rotary drill as shown in Exhibits "A-1" and "A-2" were his possessions. They were being used at the jobsite on the day in question.

25. It is quite easy to determine that the cord from halogen lamp was certainly connected to the trip tap extension (see Exhibit "A-1" as admitted).

26. Also, Mr. Patterson did concede that the trip tap cord was connected into the radio box, which, as discussed, supra, is technically an "extension cord."

27. Exhibits "A-6" and "A-7" were admitted into evidence. "A-6" was a "warning" which was on the extension cords which were part of Mr. Patterson's tools. It stated clearly the following warning: "A. electrical cords can be hazardous. B. Do not plug one extension cord into another. Avoid overheating."

28. Certainly, as shown by the warnings on the extension cords, Mr. Patterson was forewarned that there were safety issues in the way he was plugging in his cords.

CONCLUSIONS OF LAW

29. Lakes Region Drywall, Inc. was cited for the following violation, noted as "serious:"

"Installation and use. Listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification."

Violation: the employer did not provide a safe and healthful workplace free from recognized hazards that are likely to cause physical harm to the employees by ensuring listed, labeled, or certified equipment shall be installed and used in accordance with instructions included in the listing, labeling, or certification. Electrical equipment was being used in violation of this standard in manufacturer's instructions.

Rule 1926.403(b)(2).

30. Clearly, Mr. Patterson did not install his equipment in accordance with the instructions included in the listing, labeling, or certification. The electrical equipment was being used in violation of standards and manufacturer's instructions.

31. Mr. Patterson seemed quite sincere that he works hard and does try to keep his employees "safe." However, the Hearing Officer is not persuaded that, had Mr. Genung come by at noontime, he would have remedied the situation. It is clear that, as of 9:00 a.m., at the approximate time Mr. Genung was inspecting, Mr. Patterson and his company were in violation of the standards as noted in Rule 1926.403(b)(2).

PENALTY

Mr. Genung explained the monetary penalty (see Exhibit "B" as admitted). As explained, the severity was "medium." The probability was "greater." The potential penalty was as high as \$3,500.00. However, after looking at adjustment factors, such as "size," "good faith," and "history," the adjusted penalty was \$875.00. The monetary penalty is deemed to be reasonable and is AFFIRMED.

ORDER

The violation is hereby AFFIRMED by the Hearing Officer along with the monetary penalty as noted.

Dated at Montpelier, Vermont this 22nd day of July, 2013.



Alan S. Rome, Esq.
HEARING OFFICER

8/12/13

